IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTIETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

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WRIT PETITIONS No. 18345 & 21012 OF 1997

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WRIT PETITION NO : 18345 of 1997

Between:

1 M.Anji Reddy S/o Sattish Reddy(Died), R/o Nalgonda.
2 Smt.M.Edamma W/o.M.Anji Reddy, R/o.Nalgonda.
3 Kum.Kavitha D/o.M.Anji Reddy, Rep.by her mother Petitioner No.2.
4 M.Praveen Kumar Reddy S/o.M.Anji Reddy, Rep.by his mother Petitioner

No.2.
(The Petitioners No.2 to 4 are brought on record as LRs of deceased (P1) as

per Court Order dt.8.10.98 in WPMP 32203/98)

..... PETITIONERS

AND

1 The Labour Court-III rep.by its Presiding Officer, IV Floor

Chandravihar,M.J.Road,Hyderabad.
2 M/s Rasi Cement Limited Rep.by its General

Manager, Vishnupuram,Wadapally,Nalgonda District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ particularly one in the nature of certiorari and quash the Award to the

extent it is against the petitioner after calling for the record in I.D.No.454/93 on the file of the Labour Court III,Hyderabad and direct the management to reinstate the petitioner into service with full back wages and all other attendant benefits.

WRIT PETITION NO : 21012 of 1997

Between:

K.Prakash S/o.-- R/o.Nalgonda.

..... PETITIONER

AND

1 The Labour Court-III Rep.by its Presiding Officer
IV Floor Chandara Vihar Building, M.J.Road Hyderabad.
2 M/s.Rasi Cement Limited Rep.by its General Manager
Vishnupuram Wadapally, Nalgonda District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to

pass an order or issue a writ particularly one in the nature of Writ of Certiorari and quash the Award to the extent it is against the petitioner after calling for the record in I.D.No.451/1993 on the File of the Labour Court-III,Hyderabad, and to direct the management to reinstate the petitioner into service with full back wages and all other attendant benefits.

Counsel for the Petitioners in both the Writ Petitions : MR.B.G.RAVINDER REDDY

Counsel for the Respondent No.2 in both the Writ Petitions : MR.P.NAGESWAR SREE

The Court made the following :

COMMON ORDER :

These two Writ Petitions are filed by the petitioners, who are the employees of the 2nd Respondent-Company and who were dismissed from service after a Departmental enquiry. Questioning the said proceedings, the employees raised an Industrial Dispute before the Labour Court. The Labour Court, on appreciation of the material placed before it, held that the mis-conduct as alleged, was not established completely. Subsequently, the Labour Court, instead of ordering the reinstatement, passed orders awarding compensation. The said compensation was awarded on the ground that the Management had lost confidence in the employees, therefore reinstatement would result in friction and unnatural distrust, hence the said order was passed. Aggrieved by that, the petitioners have come up with these Writ Petitions.

At the time of hearing, the learned Counsel for the petitioners contended that the Labour Court has committed a grave error in not ordering reinstatement of the petitioners, despite finding that the charges were not completely proved against the workmen. It is also contended that though it was not the stand of the management that they have lost the confidence on the workmen, the orders of removal were passed only on certain charges. When once the management did not plead and prove as to the loss of confidence, it is not open to the Labour Court to deny reinstatement in the light of the decision of the Apex Court in the case of *Kanhaiyalal Agrawal & others Vs. Factory Manager, Gwalior Sugar Company Ltd.* According to the learned Counsel, the Apex Court held that the loss of confidence has to be pleaded and proved. In the present case, admittedly there is absolutely no pleading and no evidence with reference to the said loss of confidence. In the absence of pleadings as well as evidence, it was not open to the Labour Court to award compensation on that premise, therefore sought to set aside the said order and order reinstatement of petitioners with all consequential benefits.

The learned Counsel appearing for the 2nd respondent-Company on the other hand, supported the order. The learned Counsel contended that though the Labour Court gave benefit of doubt to the workmen holding that the charges were not proved completely, but at the same time, taking the substantial material on record into account, awarded compensation instead of ordering reinstatement in view of recording a finding that the reinstatement would cause friction and unnatural distrust, therefore there is no case for reinstatement as rightly held by the Labour Court. The learned Counsel also relied upon a judgment of the Apex Court in the case of *Shri M.L.Kamra Vs. New India Assurance Co. Ltd. & another*.

Heard both sides and considered the material on record.

Admittedly both the workmen were removed on certain charges, which were found proved by the enquiry officer, but on merits, the Labour Court gave a finding that the charges were not completely

proved against the workmen. But instead of ordering reinstatement on that premise, proceeded on the ground that reinstatement would cause friction and unnatural distrust, therefore awarded a compensation. The contention of the learned Counsel for workmen is that in view of the binding decision of the Apex Court held in the case of *Kanhaiyalal* (1 Supra), the workmen are entitled for reinstatement. In the absence of any specific pleadings and evidence to prove the said pleadings as to the loss of confidence, the Apex Court in the above case, held as under :

> *"Substantial contention on the merits of the case by the employer in these appeals is that the finding of loss of confidence in the employee by the Labour Court has been reversed in appeal by the Industrial Court on unreasonable grounds. What must be pleaded and proved to invoke the aforesaid principle is that (i) the workman is holding a position of trust and confidence; (ii) by abusing such position, he commits acts which results in forfeiting the same; and (iii) to continue him in service would be embarrassing and inconvenient to the employer or would be detrimental to the discipline or security of the establishment. All these three aspects must be present to refuse reinstatement on the ground of loss of confidence. Loss of confidence cannot be subjective based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management regarding trustworthiness or reliability of the employee must be alleged and proved. Else, the right of reinstatement ordinarily available to the employee will be lost."*

Though the learned Counsel for the respondents referred to another decision of the Apex Court in the case of *M.L.Kamra* (2 supra), which was a decision rendered in the year 1992, as per the later decision, it is very clear that unless there are pleadings as well as material proving the loss of confidence, the management is not entitled to deny the benefit of reinstatement to the workmen.

In the above circumstances, the impugned order is illegal. Therfore the order of the Labour Court to the extent of awarding compensation, is set aside and the matter is restored to the Labour Court to reconsider the relief to which the workmen are entitled. The

Labour Court is also directed to decide the issue expeditiously, preferably within a period of two months from the date of receipt of a copy of this order.

Writ Petitions are accordingly allowed. No costs.

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20th September, 2004.

ajr

To

1 The Presiding Officer, Labour Court-III, IV Floor,

Chandravihar,M.J.Road,Hyderabad.

2 The General Manager, M/s Rasi Cement Limited,

Vishnupuram,Wadapally,Nalgonda District.

3 Two C.D. copies.

N.B. :-

Office shall place the copies of this order in respective

Bundles after the signature of his Lordship.